IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5787 OF 2005

Ramasubbu Suriyanarayanan ...Applicant

Versus

State of Maharashtra ...Respondent

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Mr. Vijay Pradhan, Sr. Advocate i/b R. Sathyanarayanan, for Applicant

Mr. Rajesh More, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 3RD OCTOBER, 2005

P. C.:-

1. Heard the learned counsel for the applicant i.e. original accused No.3 and the learned A.P.P. for the State.

2. In the present application two prayers have been made. One is for discharge and the second prayer for expunging of remarks in the order dated 4.7.2005 passed by the learned Sessions Judge while deciding the application for discharge. The said remarks are as follows:-

"I find no force or substance in the

submission of learned counsel for the accused persons that the accused never indulged in any anti social activities as alleged in the present case".

. The learned A.P.P. on instructions states that there is no objection to the said remarks being expunged from the order dated 4.7.2005. In view of this statement, the said remarks is expunged from the impugned order dated 4.7.2005.

3. The applicant has also prayed for discharge in Sessions Case No. 188 of 2004. The said case arises out of C.R. No. 117 of 2001 of Ambad police station. The said case is under Sections 147, 148, 149, 123, 324, 426, 336, 323 r.w. 120-B of I.P.C. The main ground on which the discharge is being sought is that the applicant was not present at the scene of offence when the incident took place. It is the case of the applicant that he was not present at the spot at the time of the incident but he was in the Sessions Court at Nashik in relation to Sessions Case No.169/2000 from 11.00 a.m. to 4.30 p.m. and charge came to be framed on that day by the Court.

4. The incident in the present case has taken place between 1.30 to 1.45 p.m. on 23.4.2001. The place

of the incident is about ten kilometres away from the Sessions Court. Thus, it is submitted that as the applicant was before the Court of Sessions from 11.00 a.m. to 4.30 p.m., he could not have been present at the scene of incident.

5. In the present case, statements of many witnesses have been recorded including the statement of Madhukar Patil who is the injured witness and the complainant Kishore. Both these witnesses have specifically named the applicant and have stated that at the time of incident the applicant came in a vehicle and he had given threats. Immediately, thereafter two vehicles and two Rickshaws came to the spot in which there were many persons who were armed with weapons and those persons assaulted the witness. The complainant Kishore as well as injured witness Madhukar Patil have specifically named the applicant and the role played by him. So also other witnesses i.e. Arun Waghmare, Sharad Gharte, Devanand Surve and others have also implicated the applicant.

6. On behalf of the applicant reliance is placed on three affidavits. The said affidavits state that the applicant was in the Court from 12.30 p.m. to 4.30 p.m. The lerned counsel further submitted that that it is on the basis of these very affidavits that bail was granted to the applicant. It is needless to

state that the observations in the order granting bail are only limited to the consideration of the prayer for bail. The present application is an application for discharge. It is well settled that the accused persons can be discharged only when there is no sufficient material to proceed against them. As stated earlier, the witnesses have clearly implicated the applicant. No doubt, the applicant was present before the Sessions Court in relation to Sessions Case No. 169 of 2000. However, in the said case it is an admitted fact that the charge was framed only at 4.30 p.m. The incident in the present case has occurred between 1.30 to 1.45 p.m. Admittedly, the spot of the incident is at the distance of less than ten kilometres from the court premises, in such case it was possible for the accused to participate in the incident and thereafter reach the court by 4.30 p.m. when the charge was framed.

7. The witnesses have clearly stated that the applicant had come to the spot of the incident in a vehicle. Thus, when the charge was framed at 4.30 p.m. the possibility cannot be excluded that the applicant reached the spot of incident at about 1.30 to 1.45 p.m. The applicant has taken a defence of alibi. The said defence would have to be proved by the applicant by leading evidence during the course

of trial and by examining defence witnesses, if necessary, or in the course of cross examination of the prosecution witnesses. On perusal of the material adduced by the prosecution, I find that there is sufficient material to proceed against the applicant, hence, this is not a fit case to discharge the applicant. The prayer for discharge is rejected.

8. It is made clear that the trial Court shall not be influenced by any observations made in this order while disposing of the trial.

9. Application is partly allowed.

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